

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5796 OF 2005

1. Ms.Kellogg India Private
Limited.

2. Mr.Madhukar Patil.

... Petitioners.

V/s.

1. Union of India.

2. Asst.Commission,
Central Excise & Customs.

3. Commissioner of Central
Excise, Mumbai-VII.

... Respondents.

A.Hidayatullah, senior counsel i/b. Basil
Menezes for the petitioners.

B.A.Desai, Addl. Solicitor General with
Anurag Gokhale for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

RESERVED ON : 3rd October 2005.

PRONOUNCED ON : 13th October 2005.

JUDGMENT : (Per V.C.Daga, J.)

. This petition filed under Article 226 of the
Constitution of India arises out of dispute between
the petitioners and the Central Excise Department
(respondents herein), which centers around the
question: whether the product of the petitioners,
viz. "CHOCOS" is classifiable under Chapter
Sub-heading No.1904.10 or Chapter Sub-heading
No.1804.00 of the Tariff Act?

Factural Background :

2. Filtering out unnecessary details, the factual background relevant to the present dispute is as follows:

3. The petitioner No.1 - M/s.Kelloggs India Private Limited is engaged, inter alia; in manufacture of excisable goods falling under the Central excise Tariff Act, 1985 ("Tariff Act" for short).

4. It appears that the samples of the product of the petitioners known as "CHOCOS" were analysed by the Deputy Chief Chemist, Central Excise, Mumbai; whose test reports dated 10th March, 1996 and 19th March, 1996 revealed amongst others that the content of 'cocoa' therein exceeded the minimum limit of 6% as stipulated in Note No.2 of Chapter 19 of the Tariff Act. This led the Central Excise Department/ the respondents to form a prima facie; opinion that the subject product needed to be classified under Chapter Sub-heading No.1084.00 and not under Chapter Sub-heading No.1904.10 as sought to be classified by petitioner No.1.

5. A show-cause-notice was issued to the petitioners calling upon them to show cause as to why their product 'CHOCOS' should not be classified under Chapter Sub-heading No.1084.00 of the Tariff Act and, the classification declaration filed under rule 173-B of the Central Excise Rules, 1944 by them during the financial year 1996-97 till the date of show-cause-notice be not accepted accordingly.

6. The petitioners submitted their reply vide letter dated 6th January, 2000; wherein they challenged the test reports of the Deputy Chief Chemist stating that cocoa content of their product 'CHOCHO' exceeds 6% by weight. According to them, cocoa content was merely 5.16% by weight. Petitioners submitted that in the absence of details of the test reports, it was not possible for them to understand the nature of the test carried out by the Deputy Chief Chemist. The petitioners, thus, sought an opportunity to cross-verify the test reports and also requested for personal hearing.

7. The adjudicating authority after hearing the petitioners rejected their contentions and came to the conclusion that the petitioners product 'CHOCOS' was correctly classifiable under Chapter Sub-heading

No.1804.00 of the Tariff Act. Accordingly, all the classification lists, which were pending, were finalised vide order-in-original dated 4th February, 2000.

8. Being aggrieved by the aforesaid order, petitioners unsuccessfully carried appeal before the Commissioner (Appeals), who vide his order dated 18th September, 2000 rejected their appeal.

9. Being aggrieved by the aforesaid order of the first appellate authority, petitioners carried further appeal to the Customs Excise and Gold Control Appellate Tribunal ("Tribunal" for short).

10. The Tribunal vide its order dated 16th May, 2001 set aside the impugned order impugned before it; allowed the appeal and remanded the matter to the adjudicating authority for consideration afresh as directed in the remand order. The relevant paragraphs of the remand order of the Tribunal read as under:

5. Where the classification of a commodity depends upon its corresponding to a specified chemical composition, the manufacturer is entitled to be told the methodology of analysis by which the department concludes that the product conforms to the composition on the basis of

which classification is proposed We agree that the reply to the show cause notice does not specifically say this, but the intention in that reply, referring to "cross objection and cross verification" of the test report and the repeated insistence upon the copy of the test report, make clear the manufacture's desire to be informed he methodology of the test and parameters adopted by the department to come to the conclusion that the product contain a particular percentage of cocoa. In any event, a specific request was made to the Commissioner (Appeals) for cross-examination of the Deputy Chief Chemist. In fact that CFTR, the premier food research institution of the Government suggests that it was unable to directly determine the cocoa content emphasizes the need that the appellant was asking for this information.

6. We are therefore of the view that the appellant should be indicated the methodology by which the Deputy Chief Chemist concluded the cocoa content to be excess of 6%. After this is communicated to the appellant, if it desires to cross-examine the Deputy Chief Chemist, that should also be permitted. after doing sop and going the appellant and the department an opportunity to produce evidence, the classification should be decided afresh.

7. Accordingly, we allow the appeal, set aside the impugned order and remand the matter to the Deputy Commissioner for passing appropriate orders in accordance with law.

(Emphasis supplied)

11. Pursuant to the Tribunal's order, in second round of proceeding, the photo-stat copies of some of the pages of the book known as "The Chemical Analysis of Foods", by David Pearson, 7th Edition were supplied to the petitioners vide letter dated

16th March, 2005. The petitioners, not being satisfied with the receipt of photo-stat copies of said four pages of the book referred herein, demanded full text of the book referred as also copies of the test reports. The petitioners also sought methodology followed for determination of cocoa content and prayed for an opportunity to cross-examine the Deputy Chief Chemist. A series of letters, written by the petitioners in this behalf, are referred to in the petition.

12. The petitioners claimed to have attended the personal hearing, fixed on 30th June, 2005 pursuant to the remand order passed by the Tribunal; and again reiterated that the remand order of the Tribunal has not been complied with by the respondent-department. It was, thus, contended that it was not possible for them to conduct cross-examination on the date fixed. The petitioners again requested for a copy of test report; methodology and the book relied upon for testing their product and prayed for reasonable time to cross-examine the Deputy Chief Chemist. This request did not find favour with the adjudicating authority. With the rejection of the prayer made by the petitioners, the impugned order dated 22nd July,

2005 came to be passed and notice of demand impugned in this petition came to be served on the petitioners.

13. The petitioners informed the respondent No.3 that they are in the process of challenging the order of adjudication dated 22nd July, 2005 (Exh.A) as such, they prayed for keeping the demand as well as other show cause notices in abeyance. This prayer of the petitioners also did not find favour with respondent No.3, who proceeded to pass another order of adjudication dated 31st August, 2005 (Exh.A-1) and confirmed further demand against the petitioners.

14. The petitioners have amended their petition so as to challenged this second order dated 31st August, 2005 (Exh.A-1). Thus, two adjudication orders dated 22nd July, 2005 (Exh.A) and 31st August, 2005 (Exh.A-1) are the subject matter of challenge in this petition.

Events Pending Petition :

15. This petition was posted for hearing before us on 21st September, 2005. Mr.Hidayatulla, learned

senior counsel appearing for the petitioners during the course of hearing made a serious grievance for not supplying copies of the test reports and alleged breach of principles natural justice as well as that of the terms of remand order passed by the Tribunal.

16. Mr.B.A.Desai, learned Additional Solicitor General appearing for the respondents during the course of hearing, reluctantly, handed over the copies of the test reports Mr.Hidayatulla, with the receipt of the copies of the test reports, sought time to go through the same; to find out whether or not that would meet the requirement of the petitioners. Consequently, petition was adjourned from time to time by consent of parties hoping that the dispute will go back to the adjudicating authority for de novo consideration. That is how, today, this petition has come up for further hearing before us.

17. Mr.Desai, learned Additional Solicitor General, today, took a very strange stand and insisted for hearing and prayed for dismissal of this petition on his submissions, reference of which is made in the subsequent paras of this judgment. That is how, we were compelled to decide this

petition dealing with the rival contentions, which could have been avoided had the things been seen in its proper perspective by the Revenue.

Rival Contentions :

18. Mr.B.A.Desai, learned Additional Solicitor General by way of preliminary objection submitted that this petition should not be entertained under Article 226 of the Constitution of India in view of the availability of alternate remedy by way of appeal under the Central Excise Act, 1944. He submits that the submissions relating to the breach of principles of natural justice and consideration thereof involve question of law and facts. He further submits that it is not sufficient for the petitioners merely to demonstrate breach of principles of natural justice but they must also establish the prejudice suffered by them.

19. On merits, Mr.Desai submitted that there was a complete compliance of the remand order, hence the grievance made in the petition with regard to non-compliance of the remand order is without any merit. He submits that the petition is, thus, liable to be dismissed in limine.

20. Per contra, at the outset, Mr.Hidayatullah, learned senior counsel appearing for the petitioners submits that considering the fact that on the last date of hearing learned Additional Solicitor General having supplied the copies of the test reports, the impugned orders be set aside by consent of parties without going into the intricacies of the rival submissions, keeping them open. Mr.Desai strongly opposed this suggestion. Mr.Hidayatullah, considering sharp reacting of the Revenue, did not pursue his line of submission and proceeded to canvass his submissions on merits. At this stage of the petition, we thought it fit to dispose of the petition finally at the stage of admission itself by putting the parties on notice thereof.

21. Hence, rule. By consent of parties rule made returnable forthwith.

22. Mr.Hidayatullah submits that it was obligatory on the part of the respondents to supply the test reports as directed by the Tribunal while remanding the appeal. He submits that had there been no necessity to supply copies of the test reports as sought to be contended on second thought

by the learned Additional Solicitor General, in that event, he would not have handed over the copies of the test reports to the petitioners. He further submits that unless learned Additional Solicitor General was of the view that the test reports were necessary for effective cross-examination, there was no necessity for him to supply the copies thereof. He, thus, submits that Mr.Desai, learned Additional Solicitor General has, virtually, conceded that denial to supply copies of test reports to the petitioners was clearly in breach of principles of natural justice.

23. Mr.Hidayatullah further urged that the rule of exclusion of writ jurisdiction, in view of availability of appellate remedy, is a rule of discretion and not one of compulsion. He submits that failure on the part of the respondents to follow principles of natural justice is sufficient to enable this Court to adjudicate upon this writ petition in spite of availability of alternate remedy. In the case where this Court finds that the facts of the case demand adjudication of the grievance of the party under Article 226, the petition cannot be thrown out of Court.

24. Mr.Hidayatullah, relying on paras-5 and 6 of the order of the Tribunal (reproduced hereinabove), submits that the Tribunal was also convinced of the fact that the petitioner-manufacturer was entitled to be told the methodology of the analysis employed by the respondents to conclude that the product of the petitioners conforms to the composition on the basis of which classification was proposed.

25. Mr.Hidayatullah submits that the Tribunal had agreed and recorded a positive finding that though the reply to the show-cause-notice did not specifically disclose demand for methodology of analysis but the intention in that reply, referring to "cross objection and cross verification" of the test report and the repeated insistence upon the copy of the test report, made it clear that the manufacturer desired to be informed about the methodology of the test and parameters adopted by the respondent-department to come to the conclusion that their product contain a particular percentage of cocoa. Consequently, the Tribunal was required to issue directions to the respondents to indicate the methodology by which the Deputy Chief Chemist had concluded the cocoa content to be in excess of 6%. In his submission, the Tribunal had also

observed that if the petitioners desired, they were permitted to cross-examine the Deputy Chief Chemist. That these important directions were not futile directions. These directions were with specific purpose to afford opportunity of hearing keeping in mind the principles of natural justice. That they were meant for implementation in its true letter and spirit.

26. Mr.Hidayatullah further brought to our notice that pursuant to the directions of the Tribunal instead of disclosing the methodology of analysis, the respondents chose to supply photo-stat copies of four pages of one book, viz. "The Chemical Analysis of Foods" by David Pearson, 7th Edition, published by Churchill Livingstone, Edinburgh London and New York 1976, the copies of which are placed on record of this petition. He took us through the contents of the said four photo-stat copies of the pages of the said book and pointed out therefrom that it prescribes four methods to find out cocoa content. He, thus, submits that supply of photo-stat copies of four pages of the said book containing different methods of analysis raised further question as to out of four methods which method was employed by the Deputy

Chief Chemist to find out the cocoa content. That in absence of test reports it was not possible for the petitioners to find out actual methodology employed by the Deputy Chief Chemist, while carrying out test on the subject product of the petitioners. In that view of the matter, Mr.Hidayatullah submits that supply of test reports was very much necessary for effective cross-examination of Deputy Chief Chemist.

27. Mr.Hidayatullah while criticising the approach adopted by the respondents submitted that the attempt of the respondents to play a game of hide and seek and to deny the petitioners' right to effectively cross-examine the witness has resulted in breach of principles of natural justice. He submits that no useful purpose would have been served by proceeding with the cross-examination of the Deputy Chief Chemist in the absence of material particulars with respect to the methodology of analysis employed and the material particulars of the test reports. He, thus, submits that the adjudicating authority has neither followed direction of the Tribunal contained in the remand order nor did it follow the principles of natural justice, which were necessary considering the heavy

stakes of the petitioners involved in the matter. In this view of this, he submits that no useful purpose would be served by driving the petitioners to an alternate remedy, especially, when the flagrant breach of principles of natural justice is apparent on the face of record.

28. Mr.Hidayatullah further submits that looking to the huge pendency of the matters in the Tribunal, no priority would be given to the matters like in question. The matter would remain pending for years together and during this period possibility of issuance of spate of show cause notices by the respondents cannot be ruled out. The result of all show cause notices, if issued, will center around the necessity of knowing the methodology, test reports and adjudication thereof in its proper perspective. He, thus, submits that considering the interest of justice including the interest of the Revenue, this Court should adjudicate upon this petition without relegating the petitioners to the appellate remedy. He, thus, submits that in view of supply of copies of the test reports and disclosure of the methodology during the course of hearing of this petition, the impugned order be quashed and set aside holding it to be in breach of principles of

natural justice, and the matter may be remanded to the original authority, fixing time-schedule, for disposal with direction to permit the petitioners to cross-examine the Deputy Chief Chemist of the respondent-department.

29. As already mentioned, these submissions were strongly opposed by Mr.Desai, learned Additional Solicitor General appearing for the Revenue.

Contours of Writ Jurisdiction :

30. Before proceeding to consider the rival submissions, let us consider the contours of writ jurisdiction which generated a charged debate in the Court.

31. The legal position with respect to the exercise of writ jurisdiction is now well settled. The existence of alternative remedy is no bar to a writ jurisdiction where it is alleged that the authority below has acted and proceeded to pass order in violation of principles of natural justice. The rule, exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy and discretion, rather

than a rule of law. (see **Babu Ram v. Zillah Parishad**, AIR 1969 SC 556).

32. In **Harbans Lal Sahnia v. Indian Oil Corporation Ltd.**, (2003) 2 SCC 107, the Apex Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

33. The Constitution Bench of the Apex Court in **K.S.Rashid v. Income Tax Investigation Commission**, AIR 1954 SC 207; **Sangram Singh v. Election Tribunal, Kotah**, AIR 1955 SC 425; **Union of India v. T.R. Verma**, AIR 1957 SC 882; **State of U.P. v. Mohammad Nooh**, AIR 1958 SC 86; and **M/s.K.S.Venkataraman and Co.(P) Ltd. v. State of Madras**, AIR 1966 SC 1089, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs.

However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

34. The another Constitution Bench of the Apex Court in **State of Madhya Pradesh and another v. Bhailal Bhai etc.etc.**, AIR 1964 SC 1006, held that remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated by the Apex Court in **N.T.Veluswami Thevar v. G.Raja Nainar and others**, AIR 1959 SC 422; **Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr.**, AIR 1965 SC 1321; **Siliguri Municipality and others v. Amalendu Das and others**, AIR 1984 SC 653; **A.Venkatasubbiah Naidu**

v. **S.Chellappan and others**, (2000) 7 SCC 695;
L.L.Sudhakar Reddy and others v. State of Andhra Pradesh and others (2001) 6 SCC 634; **Pratap Singh and Anr. v. State of Haryana** (2002) 7 SCC 484 and **G.K.N.Driveshafts (India) v. I.T.O. and others** (2003) 1 SCC 72.

35. In various judgments amongst others in **G.Veerappa Pillai v. Raman & Raman Ltd.**, AIR 1952 SC 192; **Assistant Collector of Central Excise v. Dunlop India Ltd.**, AIR 1985 SC 330; **H.B.Gandhi v. M/s.Gopinath and Sons**, 1992 (Suppl.) 2 SCC 312; **Ramendra Kishore Biswas v. State of Tripura**, AIR 1999 SS 294; and **Punjab National Bank v. O.C.Krishnan and others**, (2001) 6 SCC 569, the Apex Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedy before resorting to writ jurisdiction.

36. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law.

Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally, the High Court should not interfere if there is an adequate efficacious alternative remedy.

Consideration :

37. In view of the above settled position of law laid down and reiterated by the Apex Court from time to time, we first propose to deal with the plea regarding alternate remedy raised by the respondents/Revenue.

38. If somebody approaches this Court without availing the alternative remedy provided, this Court has to ensure that the petitioner has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction

39. In order to appreciate the rival submissions, one has to turn to paras-5 and 6 of the

order passed by the Tribunal which is already quoted
in para 10 (supra).

40. After remand by the Tribunal, photo-stat
copies of four pages of one book referred to above
and methodology adopted for carrying out test were
supplied by the respondents to the petitioners.
Those four pages contained four methods of carrying
out the test to find out cocoa content of the
subject product, which, undisputedly, led to a
question as which method was adopted by the Deputy
Chief Chemist to arrive at percentage of cocoa
content.

41. In order to unlock the said question the
petitioners thought it fit to ask for the test
report which they had been insisting right from the
stage of commencement of adjudication process upto
the stage of Tribunal. As a matter of fact, the
order of the Tribunal is pregnant with direction to
disclose this aspect of the matter. The Tribunal
when issued direction vide its order dated 16th May,
2001, was not very much aware of the fact that more
than one methods are available and any one of them
could be employed to find out cocoa content. Had
the Tribunal been alive to this issue or had it been

made known to the Tribunal in an unequivocal term that there were four methods available to carry out test, then, certainly, the Tribunal itself would have directed supply of copies of the test reports in a clearest possible language. However, such direction impliedly figures in paras-5 and 6 of its order. The failure on the part of the respondents to supply copies of the test reports on the date of hearing without allowing the petitioners to go through it and apply their mind was nothing but an act which was clearly in breach of principles of natural justice, hence, the bar of alternate remedy does not stand in the way of the petitioners.

42. On merits of the submission, it was legitimately open for the petitioners not to proceed with the cross-examination in absence of supply or disclosure of adequate material well in advance. It was expected on the part of the adjudicating authority to grant sufficient time to the petitioners to go through the test reports to find out which method was employed by the Deputy Chief Chemist, considering highly technical matter which the lawyers appearing might have found difficult to dissect without taking assistance of a technical expert. This can very-well be appreciated by

putting oneself in the arm chair of the advocates
representing the assesseees.

43. The rules of natural justice are the minimum standards of fair decision-making imposed on persons or bodies acting in a judicial or quasi-judicial capacity. Where the relevant person or body is required to determine questions of law or fact in circumstances where its decisions will have a direct impact on the rights or legitimate expectations of the individuals concerned, an implied obligation to observe the principles of natural justice arises. One of the shades of the rules of natural justice is a right to fair hearing. The right to fair hearing required that an individual shall not be penalised by a decision affecting his rights or legitimate expectations unless he has been given prior notice of the case against him and a fair opportunity to answer the same and to present his own view point.

44. Right to fair hearing involve prior notice of hearing; opportunity to be heard together with right to legal representation. Generally, when an oral hearing is conducted, the parties must be allowed to call witnesses, make submissions and cross-examine the witnesses called by others. Where

an oral hearing is necessary, it has been laid down in number of reported judgments that the Tribunal must: (a) consider all relevant evidence which a party wishes to submit; (b) inform every party of all the evidence to be taken into account, whether derived from another party or independently; (c) allow witnesses to be questioned; and (d) allow to comment on the evidence and argument on the whole case. The last two rights include right of cross-examination.

45. The opportunity to cross-examine involves not only notice of the adverse material but also a sufficient interval of time to prepare for cross-examination. The notice of the adverse material and opportunity of cross-examination is necessary because wherever the opponent has declined to avail himself of the offered opportunity, it must be supposed to have been because he believed that testimony could not or need not be disputed at all or be shaken by cross-examination. In this view of the matter, right to cross-examine or to have opportunity to effectively exercise that right is an essential part of principles of natural justice.[see 2002 (143) ELT 21 (SC); 2001 (136) ELT 9 (Bom); 2002 (141) ELT 24 (A.P.); 2000 (86) DLT 1 (DB) and 1989 ELT (J 502) (Delhi)].

46. Thus affected person must be given fair opportunity not only to answer the case against him but to adduce positive evidence in support of his own case together with right to contradict all adverse allegations, if necessary, by permitting him to cross-examine the witnesses of the opponent.

47. It is needless to mention that although the principles of natural justice are aimed at ensuring a fair hearing, nevertheless, depending on all the circumstances of the case, a decision reached or hearing conducted in breach of the principles of natural justice is reviewable in an action of judicial review.

48. It is a settled law that an order passed by the administrative, quasi-judicial or judicial authority in violation of principles of natural justice is void and not curable. **Lord Reid in Ridge v. Baldwin**, (1964) AC 40; (1963) 2 ALL ER 66 (HL) observed that decision given without regard to the principles of natural justice is void. **In Attorney General v. Ryan**, (1980) 2 WLR 143, the Privy Council held that the decision of a Minister which affected right of the respondent and which was made

in violation of the principles of natural justice is
a nullity.

49. The Apex Court in the case of **State of Orissa v. Binapani Devi**, AIR 1967 SC 1269 observed that if there is power to decide to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If an order is passed to the prejudice of a person ignoring the essentials of justice, the order is a nullity. In **A.K.Kraipak v. Union of India**, AIR 1970 SC 150 : (1969) 2 SCC 262 and several other cases the Apex Court has laid down that any order passed in violation of the principles of natural justice is ultra vires and void.

50. In the case of **Brajlal v. Union of India**, 1964 Mh.L.J. 500, the Apex Court was pleased to set aside the order of review passed by the Central Government. In that case the application for grant of renewal of a certificate of approval was dismissed by the State Government on the ground that the partners composing the firm had changed. The firm then applied to the Central Government for review of the State Government's order under rule 57(2) of the Mineral Concession Rules. The Central Government asked for a report from the State

Government and after taking it into consideration rejected the application for review. The contents of the State Government's report were not made known to the firm, nor was any reasonable opportunity given to the firm for presenting their case. It was contended before the Apex Court that the Central Government was acting as a quasi-judicial authority and the order which was passed taking into consideration the report of the State Government and without their knowing the contents of the report and without affording them a reasonable opportunity of presenting their case was contrary to the principles of natural justice and, therefore, void. The Apex Court upheld this submission and ruled that the Central Government could not act on the basis of the material as regards which the appellants had no opportunity to make their representation.

51. In our view, the above principle would apply even where the petitioner has been denied opportunity to have the contents of the test reports relied upon by the respondents before the adjudicating authority. In our view, the adjudicating authority was, obviously, in error in not directing the respondents to supply copies of the test reports to the petitioners. A document to

be relevant may support either the Revenue or the petitioner. No adjudicating authority can, therefore, refuse production of such a document simply because that document which is to be used against the subject is not relevant in its perception. This would certainly amount to refusal of reasonable opportunity to defend. This being the settled legal position, we hold that the adjudicating authority was, obviously, in error in refusing to direct the respondents to hand over the copies of the test reports to the petitioners which has, necessarily, prejudiced the defence of the petitioners.

52. Having examined the case on the touchstone of breach of principles of natural justice, we do not think that we would be justified in accepting the submission that the petitioners should be relegated to the appellate remedy. On the contrary, in order to shorten the length of litigation, it would be in the interest of both parties to set aside the impugned order without expressing any opinion on its merits and remit the matter back to the adjudicating authority with direction to permit the petitioners to cross-examine the Deputy Chief Chemist on day to day basis and after evidence is

over, it would be open for the adjudicating authority to heard the petitioners giving them reasonable time to make their submissions and to dispose of the adjudication proceedings in a fixed time-schedule.

53. So far as second impugned order dated 31st August, 2005 incorporated at Exh.A-1 is concerned, the basis of which being the impugned order dated 22nd July, 2005, that by itself cannot stand to the scrutiny of law. The same needs to be set aside.

54. In the aforesaid view of the matter, impugned orders at Exh.A and Exh.A-1 are set aside. Petition is allowed in terms of this order and remitted back to the adjudicating authority to decide afresh in accordance with law. The adjudicating process must be completed with expeditious despatch, at any rate, within eight weeks i.e. on or before 10th December, 2005. Till then, in order to avoid multiplication of the proceedings, it will be advisable to keep all the show cause notices in abeyance. However, in the event the adjudication order is adverse to the petitioners, the same shall stand stayed for four weeks subject to furnishing bank guarantee within

four weeks from the date of communication of the adverse order to secure the Revenue for the liability that may be determined in the adjudicating order. Both parties to appear before the adjudicating authority on 24th October, 2005.

55. Rule is made absolute in terms of this order with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)